CHAPTER 26
CONTESTED CASE PROCEEDINGS

[Prior to 9/24/86, Employment Security[370] Ch 6]
[Former 345—6.5(96) and 6.8(96) transferred to 345—9.2(17A,96) and 9.1(17A,96) respectively, IAC 6/10/92]
[Prior to 3/12/97, Job Service Division [345] Ch 6]

871—26.1(17A,96) Applicability. The rules in this chapter govern the procedures for contested case proceedings brought pursuant to Iowa Code chapter 96.

871—26.2(17A,96) Definitions. Terms defined in the Iowa employment security law and the Iowa Administrative Procedure Act and which are used in these rules shall have the same meaning as provided by such laws. In addition, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"*Contested case*" means a proceeding in which the legal rights, duties or privileges of a party are required by statute or constitution to be determined by the agency after an opportunity for an evidentiary hearing before an administrative law judge. It specifically includes any appeal from a determination of a representative of the department or any appeal or request for a hearing by an employer or employing unit from an experience rating, charge determination or other decision affecting its liability. Except as provided in subrule 26.17(5), a final decision of the employment appeal board of the department of inspections and appeals shall constitute final agency action. An administrative law judge's decision shall be the final decision of the department if there is no appeal therefrom to the employment appeal board of the department of inspections and appeals.

"*Parties in interest*" means, to an unemployment benefits action, the individual claiming benefits (claimant), the agency and any employer named in the representative's decision. The parties in interest to an action concerning employer contribution or reimbursement means the employer whose liability is affected by the action and the agency. The parties in interest to any other agency action affecting claims for benefits, other than regular unemployment, means any entity affected by the action and the agency or agencies involved.

871—26.3(17A,96) Time requirements.

26.3(1) Time shall be computed as provided in Iowa Code section 4.1(22).

26.3(2) For good cause, the administrative law judge may extend or shorten the time to take any action, except as precluded by statute.

871—26.4(17A,96) Commencement of unemployment benefits contested case.

26.4(1) An unemployment benefits contested case is commenced with the filing, by mail or in person, of a written appeal by a party in interest with the appeals section of the department. The appeal shall be addressed or delivered to: Appeals Section, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

26.4(2) An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail or in person, not later than ten calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address and shall state the following:

a. The name, address and social security number of the claimant;

b. A reference to the decision from which appeal is taken; and

c. The grounds upon which the appeal is based.

26.4(3) Notwithstanding the provisions of subrule 26.4(2), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 30 days from the mailing date of the quarterly statement of benefit charges.

26.4(4) Also notwithstanding the provisions of subrule 26.4(2), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 15 days from the mailing date of the quarterly billing of benefit charges.

871—26.5(17A,96) Commencement of employer liability contested case.

26.5(1) An employer liability contested case is commenced with the filing of a written appeal with the appeals section of the department. The appeal shall be addressed or delivered to: Appeals Section, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

26.5(2) An appeal from a decision of the tax section of the department concerning employer status and liability, assessments, contribution (tax) rate, successorship, workers' status, and all questions regarding coverage of a worker or group of workers shall be filed, by mail or in person, not later than 30 calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address and shall set forth the following:

a. The name, address, and Iowa employer account number of the employer;

b. The name and title of the person filing the appeal;

c. A reference to the decision from which the appeal is taken; and

d. The grounds upon which the appeal is based.

871—26.6(17A,96) Notice of hearing.

26.6(1) A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Notice of hearing shall be sent by first-class mail to all parties in interest at their last-known address and shall include:

a. The date, time and place of an in-person hearing, or the date and time of a telephone hearing, including instructions for calling the appeals section in advance of the hearing to provide the names and telephone numbers of all witnesses; and

b. The nature of the hearing, including the legal authority and jurisdiction under which the hearing is held; and

c. A statement of the issues and the applicable sections of the Iowa Code or Iowa Administrative Code.

26.6(2) The seven-day notice of hearing may be waived upon the agreement of the parties in interest.

26.6(3) An in-person hearing shall be scheduled in the following workforce development centers: Burlington, Carroll, Cedar Rapids, Creston, Council Bluffs, Davenport, Decorah, Des Moines, Dubuque, Fort Dodge, Mason City, Ottumwa, Sioux City, Spencer, Storm Lake, and Waterloo.

26.6(4) A hearing shall be scheduled promptly and shall be conducted by telephone unless a party in interest requests that it be held in person. A request for an in-person hearing may be denied if factors such as the distance between the parties, the number of parties or the health of any party makes it impractical or impossible to conduct a fair hearing in person. An in-person hearing may be scheduled at the discretion of the administrative law judge to whom the contested case is assigned or, in that administrative law judge's absence, the chief administrative law judge of the appeals section. The party requesting an in-person hearing will ordinarily be required to travel the greater distance if all parties are not located near the same hearing site. As a matter of discretion, the appeals section may schedule an in-person hearing at a regular hearing site approximately equidistant from the parties. In the discretion of the administrative law judge to whom the contested case is assigned, witnesses or representatives may be allowed to participate via telephone in an in-person hearing, provided that each party has at least one witness present at the hearing site. When two or more parties are involved, the evidence shall be presented during the same hearing.

26.6(5) Whenever it appears that other parties should be joined to dispose of all issues in a contested case, the administrative law judge shall so order and shall grant such continuance and hold such additional proceedings, upon notice to all parties, as may be necessary.

26.6(6) Any number of appeals involving similar issues of law or fact may be consolidated for hearing so long as no substantial rights of any party would be prejudiced by so doing.

26.6(7) Any party may appear in any proceeding. Any partnership, corporation, or association may be represented by any of its members, officers, or a duly authorized representative. Any party may appear by, or be represented by, an attorney at law or a duly authorized representative of an interested party.

26.6(8) Where a party not attending the hearing will be represented by another person, such person shall submit written proof of such representation, signed by the party such person purports to represent, at least three days before the hearing to the administrative law judge.

871—26.7(17A,96) Recusal.

26.7(1) An administrative law judge shall withdraw from participation in the hearing or the making of any decision in a contested case if:

a. The administrative law judge has a personal bias or prejudice concerning a party or a representative of a party;

b. The administrative law judge has personally prosecuted or advocated, in connection with that case, the specific controversy underlying the case, or another pending factually related case or pending factually related controversy that may culminate in a contested case involving the same parties;

c. The administrative law judge is subject to the authority, direction or discretion of any person who has personally prosecuted or advocated in connection with that contested case, the specific controversy underlying the contested case, or a pending factually related contested case or controversy involving the same parties;

d. The administrative law judge has personally investigated the pending contested case by taking affirmative steps to interview witnesses directly or to obtain documents directly. The term "personally investigated" does not include either direction and supervision of assigned investigators or unsolicited receipt of oral information or documents which are relayed to assigned investigators;

e. The administrative law judge has acted as counsel to any person who is a private party to that proceeding within the past two years;

f. The administrative law judge has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

g. The administrative law judge has a spouse or relative within the third degree of relationship that: is a party to the case, or an officer, director or trustee of a party; is a lawyer in the case; is known to have an interest that could be substantially affected by the outcome of the case; or is likely to be a material witness in the case; or

h. The administrative law judge has any other legally sufficient cause to withdraw from participation in the hearing and decision making in that case.

26.7(2) If the administrative law judge knows of information which might reasonably be deemed a basis for recusal but decides recusal is unnecessary, the administrative law judge shall submit the relevant information for the record along with a statement of the reasons for declining recusal.

26.7(3) If a party asserts disqualification of the administrative law judge for any appropriate ground, the party shall file an affidavit pursuant to Iowa Code section 17A.17(4) as soon as the reason alleged in the affidavit becomes known to the party. If, during the course of a hearing, a party first becomes aware of evidence of bias or other grounds for recusal, the party may move for recusal but must establish the grounds by the introduction of evidence into the record. If the administrative law judge determines that recusal is appropriate, the administrative law judge shall withdraw. If the administrative law judge decides that recusal is not required, the administrative law judge shall enter an order to that effect. This order may be the basis of the aggrieved party's appeal from the administrative law judge's decision in the case.

871—26.8(17A,96) Withdrawals and postponements.

26.8(1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of the administrative law judge to whom the case is assigned. Requests for withdrawal may be made in writing or orally, provided the oral request is tape-recorded by the administrative law judge.

26.8(2) A hearing may be postponed by the administrative law judge for good cause, either upon the administrative law judge's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the administrative law judge, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of extreme emergency.

26.8(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the administrative law judge may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the administrative law judge's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another administrative law judge. Once a decision has become final as provided by statute, the administrative law judge has no jurisdiction to reopen the record or vacate the decision.

26.8(4) A request to reopen a record or vacate a decision may be heard ex parte by the administrative law judge. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the administrative law judge's final decision in the case.

26.8(5) If good cause for postponement or reopening has not been shown, the administrative law judge shall make a decision based upon whatever evidence is properly in the record.

871—26.9(17A,96) Discovery.

26.9(1) Discovery procedures applicable to civil actions are available to all parties in interest in contested cases.

26.9(2) Unless otherwise limited by a protective order, the frequency of use of discovery methods is not limited. Upon application by any adversely affected party or upon the administrative law judge's own motion, the administrative law judge may order otherwise in the following situations:

a. The discovery sought is unduly repetitious, or the information sought may be obtained in another method that is more convenient, less burdensome or less expensive; or

b. The party seeking discovery has had prior ample opportunity to obtain the information; or

c. The discovery is unduly burdensome or expensive when viewed in the context of the factual issues to be resolved, the limited resources of the parties, and the parties' interest in prompt resolution of the contested case.

26.9(3) A party may obtain discovery regarding any matter, not privileged, relevant to the subject matter involved in the contested case, including the existence, description, nature, custody, condition and location of any tangible items and the identity and location of persons having knowledge of discoverable matters. Information may be discovered, even if inadmissible itself, if it appears reasonably calculated to lead to the discovery of admissible evidence. In any event, the names of a party's witnesses, their expected testimony, and exhibits to be offered into evidence may be obtained by discovery.

26.9(4) A party who has responded to a request for discovery with a response which was complete and accurate when made need not supplement the response to include information obtained after the response. However, a party must promptly supplement its response to requests for the identity and location of persons having knowledge of discoverable matters, the identity of each person expected to be called to testify at the hearing, and the party must produce copies of exhibits expected to be offered into evidence at the hearing as such decisions are made. A party must also promptly amend any response if it obtains information establishing that its prior response was incorrect when made or, though correct when made, is no longer correct.

26.9(5) No motion relating to discovery, including motions for imposition of sanctions, will be considered unless the moving party alleges that it has made a good faith but unsuccessful effort to resolve the issues raised in the motion with the opposing party without intervention by the administrative law judge.

26.9(6) Upon motion by a party or the person from whom discovery is sought or by any person who may be adversely affected thereby, and for good cause shown, the administrative law judge before whom the contested case is pending may make any order which justice requires to protect a party or person from oppression or undue burden of expense. Such order may deny the request for discovery or limit terms, conditions, manner and scope thereof.

26.9(7) A party may, in accordance with subrule 26.9(5), apply to the administrative law judge before whom a contested case is pending for an order compelling discovery if the party upon whom the request has been served fails within a reasonable time to make a complete, good faith response. After notice to both parties and hearing upon the motion, the administrative law judge shall enter an order which denies or compels discovery, which order may be combined with a protective order pursuant to subrule 26.9(6).

26.9(8) Upon application by any party or upon the administrative law judge's own motion, the administrative law judge may impose sanctions for the failure to make discovery; however, sanctions shall not be imposed without prior specific notice from the administrative law judge of the contemplated sanction, opportunity to be heard, and, if necessary, further opportunity to cure its failure. The sanctions may include the following:

a. The granting of a postponement to a party demonstrably prejudiced by the failure;

b. The exclusion of the testimony of witnesses not identified in response to a specific request for such information;

c. The exclusion from the record of those exhibits not identified in response to a specific request for such information;

d. The exclusion of the party from participation in the contested case proceedings;

e. The dismissal of the party's appeal.

26.9(9) Requests for discovery and responses thereto shall be filed with the Appeals Section, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319, for service on other parties and persons. Responses must be filed within ten days after mailing by the department unless an extension of time in which to comply has been granted by the administrative law judge. Requests for discovery received within five days before a scheduled contested case hearing will not be honored in the absence of a request for a postponement showing good cause therefor. A party's inattention to preparation is not good cause for postponement.

871—26.10(17A,96) Ex parte communications.

26.10(1) An ex parte communication is an oral or written communication relating directly to the facts or legal questions at issue in a contested case proceeding which is made by a party in interest to the administrative law judge to whom the case has been assigned without the knowledge or outside the presence of the other parties and with the object of affecting the outcome of the case.

26.10(2) Ex parte communication does not include:

a. Statements given by the parties to representatives of the department for use in making the initial determination;

b. Statements contained in a party's appeal from the initial determination;

c. Statements relating only to procedural or scheduling matters, such as requests for discovery, subpoenas, postponements or withdrawals of appeals;

d. Requests for clarification of a legal issue involved in a contested case, but only to the extent of requesting information on the applicable law sections and not as to matters of fact.

26.10(3) Unless required for the disposition of ex parte matters specifically authorized by statute or rule, no party or its representative shall communicate directly or indirectly with the administrative law judge to whom a contested case is assigned, nor shall the administrative law judge communicate directly or indirectly with a party or its representative concerning any issue of fact or law in a contested case unless:

a. Each party or its representative is given written notification of the communication. Such notification shall contain a summary of the communication, if oral, or a copy of the communication, if written, as well as the time, place and means of the communication.

b. After notification, all parties have the right, upon written demand, to respond to the ex parte communication, including the right to be present and heard if an oral communication has not been completed. If the communication is written, or if oral and completed, all other parties have the right, upon written demand, to a special hearing to respond to the ex parte communication.

c. Whether or not any party requests the opportunity to respond to an ex parte communication made in violation of Iowa Code section 17A.17(2), the administrative law judge shall include such communication in the official record of the contested case.

871—26.11(17A,96) Motions.

26.11(1) No technical form for motions is required. Nevertheless, prehearing motions must be in writing, state the grounds for relief and state the relief sought.

26.11(2) Any party may file a written response to a motion within five business days after the motion is served, unless the time period is extended or shortened by the administrative law judge, who may consider failure to respond within the required time period in the ruling on a motion.

26.11(3) The administrative law judge may schedule oral arguments on any motion.

26.11(4) Motions pertaining to the hearing must be filed and served at least five days prior to the date of the hearing unless there is good cause for permitting later action or the time is lengthened or shortened by the administrative law judge.

871—26.12(17A,96) Prehearing conference.

26.12(1) Any party may request a prehearing conference. A request, or an order for a prehearing conference on the administrative law judge's own motion, shall be filed not less than five days prior to the hearing. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing shall be given by the administrative law judge to all parties. For good cause, the administrative law judge may permit variance from this rule.

26.12(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses who the party anticipates will testify at the hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at the hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing within time limits established by the administrative law judge at the prehearing conference. Any such amendments must be served on all parties.

26.12(3) In addition to the requirements of subrule 26.12(2), the parties at a prehearing conference may: enter into stipulations of fact; enter into stipulations on the admissibility of exhibits; identify matters the parties intend to request be officially noticed; and consider any additional matters which will expedite the hearing.

26.12(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

871—26.13(17A,96) Subpoenas and witnesses.

26.13(1) It is the responsibility of the parties to request the attendance of such witnesses they believe have knowledge of the facts in issue in the contested case.

26.13(2) Upon the written request of a party in interest received at least three days prior to the date of a hearing, the administrative law judge shall issue a subpoena compelling the attendance of a person at the contested case hearing.

26.13(3) The written request shall include:

a. The name and address of the person to be served;

b. A statement of the relevance of the witness's testimony and that it will not repeat or duplicate the testimony of other witnesses; and

c. A statement that the witness refuses to testify voluntarily despite the party's request that the person do so.

26.13(4) A subpoena duces tecum shall be issued in the manner provided in subrule 26.13(2), except that the request must also state specifically the books, papers, correspondence, memoranda or other records desired.

26.13(5) Documents subpoenaed for telephone hearings shall be mailed or faxed to the appeals section prior to the hearing to facilitate the exchange of documents among the parties. Documents subpoenaed for in-person hearings shall be brought to the hearing site at the time of the contested case hearing, unless otherwise ordered by the administrative law judge.

26.13(6) If the administrative law judge deems it appropriate, the person to whom a subpoena is directed shall be notified and given the opportunity to object to the issuance of the subpoena.

a. If an objection to the issuance of the subpoena is raised, the administrative law judge may, as a matter of discretion, hear and rule on the objection prior to commencing the evidentiary hearing or postpone the evidentiary hearing and schedule a special hearing to receive arguments from all parties concerning the issuance of the subpoena.

b. The administrative law judge shall issue the subpoena if it is established to the administrative law judge's satisfaction that the testimony or document sought is material and relevant, is not unduly repetitious of other evidence already of record or expected to be submitted by any party, and, in the case of the subpoena duces tecum, the records requested do not disclose business secrets or cause undue burden on the party to whom the subpoena is directed.

26.13(7) If the subpoena is granted over objection, the aggrieved party may, in accordance with Iowa Code section 17A.19(1), petition the district court for review of the action before proceeding further. The aggrieved party must in that event promptly notify the administrative law judge that a petition for judicial review of such order will be filed immediately so that the contested case may be postponed until the court has issued its ruling. Nothing herein shall preclude an aggrieved party from including the granting or denial of a subpoena as grounds for appeal of the administrative law judge's decision in the contested case to the employment appeal board of the department of inspections and appeals.

26.13(8) Any subpoenaed witness attending a hearing shall be paid $10 for each day's attendance, and $5 for each attendance of less than a full day, plus mileage expenses at the rate specified in Iowa Code section 79.9 for each mile actually traveled.

26.13(9) If any person to whom a subpoena is directed refuses to honor the subpoena, the appeals section of the department may apply to the appropriate district court for an order to compel the party to obey the subpoena.

26.13(10) A party may request the issuance of a subpoena or a subpoena duces tecum to be served in another state. If the administrative law judge finds the witness or evidence sought is material, relevant and not available in this state, the administrative law judge shall explore the possibility of obtaining it voluntarily. When necessary and upon proper application, the administrative law judge shall have a subpoena or a subpoena duces tecum issued to be served by a sister agency in the state in which the witness or evidence is located, compelling the witness to testify or the evidence to be produced.

871—26.14(17A,96) Conduct of hearings.

26.14(1) Each contested case hearing shall be held and decided by an administrative law judge.

26.14(2) The administrative law judge shall inquire fully into the factual matters at issue and shall receive in evidence the sworn testimony of witnesses and physical evidence which are material and relevant to such matters. Upon the administrative law judge's own motion or upon the written application of any party, and for good cause shown, the administrative law judge may reopen the record for additional material, relevant and nonrepetitious evidence not submitted at the original contested case hearing.

26.14(3) The administrative law judge shall begin each hearing with a brief statement identifying the parties and issues, outlining the history of the case, advising the parties of their appeal rights and announcing what matters, if any, will be officially noticed. Any party may inspect and use any portion of the administrative file necessary for the presentation of its case. The administrative file may include information from the claimant's files maintained in the agency's computer system.

26.14(4) The hearing shall be confined to evidence relevant to the issue or issues stated on the notice of hearing. If, during the course of a hearing, it appears to the administrative law judge that a section of the Iowa Code not set forth in the notice of hearing may affect the administrative law judge's decision, the administrative law judge shall so notify the parties and announce willingness to continue taking testimony on the underlying factual matters if the parties agree to waive on record further notice and make no objection to continuing. If any party objects, the administrative law judge shall postpone the hearing and cause new notices of hearing, containing all relevant issues and law sections, to be sent to the parties. Notwithstanding, voluntary quits and discharges generally shall be construed to constitute the single issue of separation from employment so that evidence of either or both types of separation may be received in a single hearing.

26.14(5) If factual issues generally relevant to a party's eligibility or liability for benefits but unrelated to the underlying facts in controversy in the present contested case are exposed, the administrative law judge shall not take testimony or evidence on such issue but shall remand the issue to the appropriate section of the department for investigation and preliminary determination.

26.14(6) In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the administrative law judge may proceed with the hearing.

a. If an absent party arrives for an in-person hearing while the hearing is in session, the administrative law judge shall pause to admit the party, summarize the hearing to that point, administer the oath and resume the hearing.

b. If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the administrative law judge shall not take the evidence of the late party. Instead, the administrative law judge shall inquire ex parte as to the reason the party was late. For good cause shown, the administrative law judge shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the administrative law judge does not find a good cause for the party's late arrival.

26.14(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the administrative law judge may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the administrative law judge shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the administrative law judge shall not take the evidence of the late party. Instead, the administrative law judge shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the administrative law judge shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the administrative law judge does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

26.14(8) The administrative law judge shall record all communications with late parties. If the administrative law judge does not reopen the record, the decision in the contested case shall state the administrative law judge's reason for so doing.

26.14(9) If the late party fails once again to participate in the rescheduled hearing, there shall be no further postponements. Nevertheless, a party's failure to participate in a contested case hearing shall not result in a decision automatically being entered against it.

26.14(10) Whenever necessary, the administrative law judge may require the attendance at a hearing of department employees having knowledge of the facts in controversy or having technical knowledge concerning the issues raised in appeal.

a. If the primary issue is the claimant's ability to work, availability for work or work search, the department shall be named as respondent. The administrative law judge may call department personnel having knowledge of the facts in controversy as witnesses.

b. If the issue on appeal is an offer of or recall to work or a job referral by a local workforce development center, both the employer making the offer or recall and the workforce development center representative making the referral may be witnesses at the hearing.

c. If the issue on appeal is the claimant's refusal of employment because of wages, the administrative law judge may take the testimony of the workforce development representative having knowledge of prevailing wages in the vicinity. The administrative law judge may also obtain testimony and evidence of the hours and other conditions of work for similar jobs in the area.

26.14(11) In the discretion of the administrative law judge, witnesses may be excluded from the hearing room until called to testify. The administrative law judge shall admonish such witnesses not to discuss the case among themselves until after the record has been closed. All witnesses shall be subject to examination by the administrative law judge and by all parties.

26.14(12) The administrative law judge may expel or refuse admittance to any party, witness or other person whose conduct at the hearing is disorderly.

871—26.15(17A,96) Evidence.

26.15(1) The administrative law judge shall accept testimony and other evidence in accordance with Iowa Code section 17A.14.

26.15(2) The parties may stipulate as to all or a portion of the facts at issue in the contested case. The administrative law judge may accept the stipulation as establishing the facts of the case or may take additional evidence.

26.15(3) Documentary evidence, whether or not verified, may be accepted by the administrative law judge. Documentary evidence may be received in the form of copies or excerpts, if the originals are not readily available, provided the copies or excerpts are properly authenticated.

26.15(4) Objections to evidentiary offers shall be specific in nature and shall be noted in the record by the administrative law judge. The administrative law judge may rule immediately or defer ruling until the final decision.

871—26.16(17A,96) Recording costs.

26.16(1) The administrative law judge shall electronically record all evidentiary hearings, prehearing conferences and hearings on motions, all of which constitute a part of the record of the contested case. A party may, at its own expense, also record any hearing electronically or by certified shorthand reporter.

26.16(2) The appeals section of the department of workforce development shall provide a copy of the whole or a part of the record at cost, unless there is further appeal in which event the record shall be provided to all parties at no cost.

871—26.17(17A,96) Decisions.

26.17(1) The administrative law judge shall issue a written, signed decision as soon as practicable after the closing of the record in a contested case. Each decision shall:

a. Set forth the issues, appeal rights, a concise history of the case, findings of essential facts, the reasons for the decision and the actual disposition of the case;

b. Be based on the kind and quality of evidence upon which reasonably prudent persons customarily rely for the conduct of their serious affairs, even if none of such evidence would be admissible in a jury trial in the Iowa district court; and

c. Be sent by first-class mail to each of the parties in interest and their representatives.

26.17(2) In reaching a decision, the administrative law judge shall apply relevant portions of the Iowa Code, decisions of the Supreme Court of Iowa, published decisions of the Iowa Court of Appeals, the Iowa Administrative Code and pertinent state and federal court decisions, statutes and regulations.

26.17(3) Copies of all administrative law judge decisions shall be kept on file for public inspection at the administrative office of the department of workforce development, filed according to hearing (appeal) number and indexed by the social security number of the claimant.

26.17(4) An administrative law judge's decision allowing benefits shall result in the prompt payment of all benefits due. An appeal shall not stay the payment of benefits. An administrative law judge's decision reversing an allowance of benefits shall include a statement of overpayment of benefits erroneously paid.

26.17(5) An administrative law judge's decision constitutes final agency action in an employer liability contested case.

a. Any party in interest may file with the administrative law judge a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the administrative law judge grants the rehearing request within 20 days after its filing.

b. Any party in interest may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.

These rules are intended to implement Iowa Code chapters 17A and 96.

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